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Attorneys for Defendants Scholastic Corporation and Scholastic, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
PALMER/KANE LLC,	:
	:
Plaintiff,	:
	:
-against-	:
	:
SCHOLASTIC CORPORATION and	:
SCHOLASTIC, INC.	:
	:
Defendants.	:
-----X	

14-cv-7805 (TPG)

ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT

Defendants Scholastic Corporation and Scholastic, Inc. (together “Scholastic” or “Defendants”), by its attorneys, Frankfurt Kurnit Klein & Selz, P.C., for its answer to the Amended Complaint (“Complaint”) filed by Plaintiff Palmer/Kane LLC (“Plaintiff”), responds and alleges as follows:

JURISDICTION AND VENUE

1. In response to the allegations in Paragraph 1 of the Complaint, Scholastic admits that this is an action for copyright infringement, but denies that it has infringed any of Plaintiff’s rights.
2. The allegations in Paragraph 2 of the Complaint contain legal conclusions to which no response is required.

3. The allegations contained in Paragraph 3 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, Scholastic admits that it conducts business in the state of New York, but denies that it infringed any of Plaintiff's rights.

4. The allegations contained in Paragraph 4 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, Scholastic admits that it conducts business in the state of New York, but denies that it infringed any of Plaintiff's rights.

THE PARTIES

5. Scholastic denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint.

6. Scholastic denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint.

7. Scholastic denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint.

8. Scholastic denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint.

9. Scholastic denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint.

10. Scholastic denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint.

11. Scholastic denies the allegations contained in Paragraph 11 of the Complaint, and avers that Scholastic Inc. is a New York corporation, a publisher and distributor of children's books and other media, and a leader in educational technology-based learning materials,

technology and service, and supplemental educational materials, and is a wholly-owned subsidiary of Scholastic Corporation, which is a Delaware corporation.

12. Scholastic admits that it is a New York corporation and that its registered agent for service is CT Corporation, located at 111 Eighth Avenue, New York, NY, but denies the remaining allegations in Paragraph 12 of the Complaint and avers that Scholastic Inc. is a wholly-owned subsidiary of Scholastic Corporation.

13. Scholastic denies the allegations contained in Paragraph 13 of the Complaint, and avers that Scholastic Inc., a wholly-owned subsidiary of Scholastic Corporation, is a publisher and distributor of children's books and other media, and a leader in educational technology-based learning materials, technology and service, and supplemental educational materials.

14. Scholastic denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint.

15. Scholastic denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint, except refers to the copyright registrations referenced therein for the contents thereof.

16. Scholastic denies the allegations contained in Paragraph 16 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

17. Scholastic denies the allegations contained in Paragraph 17 of the Complaint, except refers to the documents referenced therein for the contents thereof.

18. Scholastic denies the allegations contained in Paragraph 18 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

19. Scholastic denies the allegations contained in Paragraph 19 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

20. Scholastic denies the allegations contained in Paragraph 20 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

21. Scholastic denies the allegations contained in Paragraph 21 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

22. Scholastic denies the allegations contained in Paragraph 22 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

23. Scholastic denies the allegations contained in Paragraph 23 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

24. Scholastic denies the allegations contained in Paragraph 24 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

25. Scholastic denies the allegations contained in Paragraph 25 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

26. Scholastic denies the allegations contained in Paragraph 26 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

27. Scholastic denies the allegations contained in Paragraph 27 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

28. Scholastic denies the allegations contained in Paragraph 28 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

29. Scholastic denies the allegations contained in Paragraph 29 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

30. Scholastic denies the allegations contained in Paragraph 30 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

31. Scholastic denies the allegations contained in Paragraph 31 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

32. Scholastic denies the allegations contained in Paragraph 32 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

33. Scholastic denies the allegations contained in Paragraph 33 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

34. Scholastic denies the allegations contained in Paragraph 34 of the Complaint, except refers to the documents and publications referenced therein for the contents thereof.

COUNT I
(COPYRIGHT INFRINGEMENT)

35. Scholastic repeats and realleges its responses to the allegations set forth in paragraphs 1 through 34 as if fully set forth herein.

36. Scholastic denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 36 of the Complaint.

37. Scholastic denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 37 of the Complaint.

38. Scholastic denies the allegations contained in Paragraph 38 of the Complaint.

39. Scholastic denies the allegations contained in Paragraph 39 of the Complaint.

40. Scholastic denies the allegations contained in Paragraph 40 of the Complaint.

41. Scholastic denies the allegations contained in Paragraph 41 of the Complaint.

42. Scholastic denies the allegations contained in Paragraph 42 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted as to some or all of its claims.

SECOND AFFIRMATIVE DEFENSE

Scholastic had a license to use the images and/or used the images with permission from Plaintiff's agent, who had apparent authority to grant such permission.

THIRD AFFIRMATIVE DEFENSE

To the extent that Plaintiff's claims relate to Scholastic's reuse of a photograph in a later edition, revised version, or an electronic version of a work for which Scholastic had previously licensed a photograph, such re-use is non-infringing pursuant to the revision privilege contained in Section 201(c) of the Copyright Act.

FOURTH AFFIRMATIVE DEFENSE

To the extent that Scholastic's use, if any, of the works at issue exceeded rights granted by Plaintiff, such use was made with an innocent intent and without any belief that any acts of Scholastic constituted an infringement of copyright.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims, including without limitation its claim to statutory damages and/or attorneys' fees, are barred in whole or in part because Plaintiff failed to register copyright in some or all of the works at issue before the alleged commencement of the infringement or within 3 months after the first publication of the work pursuant to 17 U.S.C. § 412.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable three year statute of limitations for a claim of copyright infringement. 17 U.S.C. § 507(b).

SEVENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff has suffered any damages, which Scholastic expressly denies, Plaintiff has failed to take any steps to mitigate its damages.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has known or should have known about the use of some of its images since at least the early 2000s and has acquiesced to such use, thus its claim is barred by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

Plaintiff has known or should have known about the use some of its images since at least the early 2000s and has acquiesced to such use, thus its claim is barred by the doctrines of waiver, acquiescence, and estoppel.

TENTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert the claims of copyright infringement in the Complaint.

ADDITIONAL AFFIRMATIVE DEFENSES

Scholastic reserves the right to amend this Answer and to plead additional or more specific defenses as warranted by the facts determined through the conclusion of the discovery process.

JURY DEMAND

Scholastic demands a trial by jury of all issues so triable.

WHEREFORE, Scholastic demands a judgment dismissing Plaintiff's Complaint, along with an award of costs, disbursements and reasonable attorneys' fees, in addition to such other relief as this Court deems just and proper.

Dated: New York, New York
December 5, 2014

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